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6 **UNITED STATES DISTRICT COURT**
7 **WESTERN DISTRICT OF WASHINGTON**
8 **AT SEATTLE**

9 ALASKA MARINE LINES, INC,

10 Plaintiff,

11 v.

12 DUNLAP TOWING COMPANY,,

13 Defendant.

Civil Action No. 2:21-cv-00842

DUNLAP TOWING COMPANY'S NOTICE
OF REMOVAL

14
15 **TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE**
16 **WESTERN DISTRICT OF WASHINGTON:**

17 **PLEASE TAKE NOTICE** that pursuant to 28 U.S.C. §§ 1333, 1441(a), and 1446,
18 Defendant Dunlap Towing Company (“Dunlap”) hereby gives notice of removal of the action
19 captioned *Alaska Marine Lines, Inc. v. Dunlap Towing Company*, bearing Index No. 21-2-07477-
20 1 SEA from the Superior Court of the State of Washington for the County of King to the United
21 States District Court for the Western District of Washington. Pursuant to 28 U.S.C. § 1446(a),
22 Dunlap provides the following statement of grounds for removal.

23 **I. PROCEDURAL HISTORY**

24 1. Plaintiff Alaska Marine Lines, Inc. (“AML”) commenced this lawsuit in the
25 Superior Court of the State of Washington for the County of King by filing a complaint bearing
26 Index No. 21-2-07477-1 SEA on or about June 7, 2021.

1 2. Pursuant to 28 U.S.C. § 1446(a) and United States District Court for the Western
2 District of Washington Local Civil Rule 101(b)(1), attached to this Notice are true and correct
3 copies of all process, pleadings, and orders served upon the Defendant. *See* Exhibits A-D.

4 3. Pursuant to United States District Court for the Western District of Washington
5 Local Civil Rule 101(b)(2), filed herewith is a certificate of service listing all counsel who have
6 appeared in this action with their contact information.

7 **II. FEDERAL JURISDICTION**

8 4. This case is removable under 28 U.S.C. § 1441(a), which provides: “Except as
9 otherwise expressly provided by Act of Congress, any civil action brought in a State court of which
10 the district courts of the United States have original jurisdiction, may be removed by the defendant
11 or the defendants, to the district court of the United States for the district and division embracing
12 the place where such action is pending.”

13 5. This case is one “of which the district courts of the United States have original
14 jurisdiction” because it falls within federal admiralty jurisdiction under 28 U.S.C. § 1333(1), which
15 provides: “The district courts shall have original jurisdiction, exclusive of the courts of the States,
16 of ... [a]ny civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other
17 remedies to which they are otherwise entitled.” *See Morris v. Princess Cruises, Inc.*, 236 F.3d
18 1061, 1069 (9th Cir. 2001) (explaining that admiralty cases fall within federal courts’ original
19 jurisdiction).

20 6. The Complaint makes clear that this case falls within federal admiralty jurisdiction
21 under § 1333(1). AML alleges that its claim against Dunlap concerns damage sustained by the
22 barge NANA PROVIDER while being towed by the vessel POLAR KING in the vicinity of
23 Seymour Narrows, British Columbia, on or about November 9, 2019. The grounding of the barge
24 concerns an alleged maritime tort and AML claims Dunlap is liable for negligence and/or gross
25 negligence. The complaint also alleges a claim under a Standing Time Charter (“STC”) between
26 AML and Dunlap. The STC is a maritime contract and AML alleges Dunlap is liable for breach
27 of contract.

1 7. Federal courts have long considered actions involving maritime torts and maritime
2 contracts to be within the admiralty jurisdiction of the federal courts under 28 U.S.C. § 1333 and
3 governed by federal maritime law.

4 8. With respect to AML's claims for negligence and gross negligence, federal courts
5 have admiralty jurisdiction when "(1) the alleged wrong occurred on or over navigable waters, and
6 (2) the wrong bears a significant relationship to traditional maritime activity." *Williams v. United*
7 *States*, 711 F.2d 893, 896 (9th Cir.1983). "[V]irtually every activity involving a vessel on
8 navigable waters" is a "traditional maritime activity sufficient to invoke maritime jurisdiction."
9 *See Taghadomi v. United States*, 401 F.3d 1080, 1087 (9th Cir. 2005) (quoting *Jerome B. Grubart,*
10 *Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 542 (1995)). Admiralty jurisdiction governs
11 whether or not plaintiffs label their case an admiralty case. *See Adamson v. Port of Bellingham*,
12 907 F.3d 1122, 1126 (9th Cir. 2018).

13 9. With respect to AML's breach of contract claim, charter parties have long been
14 held to be maritime contracts and claims arising under such contracts fall within federal admiralty
15 jurisdiction. See, e.g., *Insurance Company v. Dunham*, 78 U.S.1, 26 (1870); *Morewood v.*
16 *Enequist*, 64 U.S. 491 (1860); *The Ada*, 250 F. 194 (2d Cir. 1980); and Gilmore & Black, *The Law*
17 *of Admiralty* 193 (1975).

18 10. AML's case is unquestionably an admiralty case and thus is removable under
19 § 1441(a).

20 11. AML cannot rely on § 1333(1)'s "savings to suitors" clause to prevent removal
21 because this case is removable as "a civil action ... of which the district courts of the United States
22 have original jurisdiction." 28 U.S.C. § 1441(a).

23 12. Prior to 2011, the relevant federal removal statute provided that defendants could
24 remove "[a]ny civil action of which the district courts have original jurisdiction" only so long as
25 the case was "founded on a claim or right arising under the Constitution, treaties or laws of the
26 United States." 28 U.S.C. § 1441(b) (2006). Several courts interpreted this prior language to mean
27 that admiralty cases were not removable to federal court unless there was an independent basis for

1 federal subject matter jurisdiction beyond admiralty. *See, e.g., Morris v. TE Marine Corp.*, 344
2 F.3d 439, 444 (5th Cir. 2003); *see also Morris v. Princess Cruises*, 236 F.3d at 1069 (suggesting
3 the same). The rationale of these decisions was that admiralty claims, although within the original
4 jurisdiction of federal district courts under 28 U.S.C. § 1333, do not technically “aris[e] under”
5 federal law as a substantive matter. *See TE Marine*, 344 F.3d at 444.

6 13. But Congress in 2011 eliminated § 1441’s “arising under” limitation. *See Federal*
7 *Courts Jurisdiction and Venue Clarification Act of 2011*, Pub. L. No. 112-63, 125 Stat. 759. The
8 statute now broadly permits removal of “any civil action brought in a State court of which the
9 district courts of the United States have original jurisdiction” unless “otherwise expressly provided
10 by Act of Congress.” 28 U.S.C. § 1441(a) (2018). As several courts have held, this critical change
11 makes admiralty cases removable: There is no question that an admiralty case is “a civil action ...
12 of which the district courts of the United States have original jurisdiction,” and thus it is removable
13 regardless of whether it arises under federal law. *See Lu Junhong v. Boeing Co.*, 792 F.3d 805, 817
14 (7th Cir. 2015); *Genusa v. Asbestos Corp.*, 18 F. Supp. 3d 773, 790 (M.D. La. 2014); and *Ryan v.*
15 *Hercules Offshore, Inc.*, 945 F. Supp. 2d 772, 778 (S.D. Tex. 2013).¹

16 14. Thus, this case is removable under § 1441(a) because, as an admiralty case, it falls
17 within the original jurisdiction of the federal district courts.

18 **III. VENUE**

19 15. The Superior Court of the State of Washington for the County of King is located
20 within the Western District of Washington. Removal to this Court thus satisfies the venue
21 requirement of 28 U.S.C. § 1446(a).

22 **IV. TIMELINESS**

23 16. AML commenced this lawsuit on or about June 7, 2021.

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26 ¹ *But see Coronel v. AK Victory*, 1 F. Supp. 3d 1175 (W.D.Wa. 2014). The United States Supreme
27 Court and the Ninth Circuit Court of Appeals have not issued a ruling as to the removability of
admiralty cases under 28 U.S.C. § 1441(a) (2018).

1 17. Dunlap received a copy of the Summons and Complaint by email on or about June
2 7, 2021. Therefore, this Notice of Removal is timely under 28 U.S.C. § 1446(b)(1).

3 **V. NOTICE**

4 18. The written notice required by 28 U.S.C. § 1446(d) will be filed simultaneously in
5 the Superior Court of the State of Washington for the County of King with the filing of this Notice
6 of Removal and will be promptly served on Plaintiff.

7 **VI. RESERVATION OF ALL AVAILABLE RIGHTS AND DEFENSES**

8 19. By filing this notice of removal, Defendant does not waive any legal defenses and
9 expressly reserves the right to raise any and all legal defenses in subsequent proceedings.

10 20. If any question arises as to the propriety of this removal, Defendant requests the
11 opportunity to present written and oral argument in support of removal.

12 **VII. CONCLUSION**

13 21. WHEREFORE, Defendant removes this lawsuit from the Superior Court of the
14 State of Washington for the County of King to the United States District Court for the Western
15 District of Washington pursuant to 28 U.S.C. §§ 1333, 1441, and 1446 (and any other applicable
16 laws).

17
18 DATED this 23rd day of June, 2021

COLLIER WALSH NAKAZAWA LLP

19
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1 DATED this 23rd day of June, 2021

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**pro hac vice application to be submitted*